

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

<p>STEPHEN GRAY, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>CITIGROUP INC., <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>No. 07 Civ. 9790 (SHS) (DCF)</p> <p>ECF Case</p>
<p>SHAUN ROSE, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>CITIGROUP INC., <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>No. 07 Civ. 10294 (DC)</p> <p>ECF Case</p>
<p>MEREDITH TRANBERG, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>CITIGROUP INC., <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>No. 07 Civ. 10341</p> <p>ECF Case</p>
<p>ANTON K. RAPPOLD, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>CITIGROUP INC., <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>No. 07 Civ. 10396</p> <p>ECF Case</p>
<p>SAMIER TADROS, on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>CITIGROUP INC., <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>No. 07 Civ. 10442</p> <p>ECF Case</p>

<p>STEPHAN FIORINO, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>CITIGROUP INC., <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>No. 07 Civ. 10458</p> <p>ECF Case</p>
<p>JAMES BOLLA, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>CITIGROUP INC., <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>No. 07 Civ. 10461</p> <p>ECF Case</p>
<p>MARK GEROULO, individually, on behalf of the CITIGROUP 401(k) Plan, the CITIBUILDER 401(k) PLAN FOR PUERTO RICO, and all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>CITIGROUP, INC., <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>No. 07 Civ. 10472</p> <p>ECF Case</p>
<p>ALAN STEVENS, on behalf of himself and all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>CITIGROUP INC., <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>No. 07 Civ. 11156</p> <p>ECF Case</p>
<p>STEVEN GOLDSTEIN, on behalf of himself and a class of persons similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>CITIGROUP INC., <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>No. 07 Civ. 11158</p> <p>ECF Case</p>

CHRIS SOUTHARD, on behalf of all others similarly situated,

Plaintiff,

v.

CITIGROUP INC., *et al.*,

Defendants.

No. 07 Civ. 11164

ECF Case

**DEFENDANTS' RESPONSE TO CONSOLIDATION MOTIONS BY
PLAINTIFFS GRAY, TADROS AND BOLLA AND BY PLAINTIFF GOLDSTEIN**

Eleven purported ERISA class actions arising out of the same alleged operative facts concerning Citigroup's mortgage securitization business are now pending in the Southern District of New York. Ten of them are either pending before Judge Stein or have been referred to him as possibly related to the first-filed action, and one is before Judge Chin. In addition, six securities and derivative cases arising from those alleged facts are pending in this Court, three before Judge Stein. Plaintiffs in four of the ERISA cases (*Gray, Tadros, Bolla and Goldstein*) sensibly have moved for consolidation of all of the ERISA actions.

As discussed below, Defendants agree that these cases should be consolidated before Judge Stein, agree to the pleading timetable outlined in the proposed pretrial order submitted by the *Gray, Tadros, and Bolla* plaintiffs, and take no position concerning appointment of lead plaintiffs and lead counsel.¹ By the same logic, we

¹ A number of defendants have not been served with process in certain of the above-captioned actions. This submission is without waiver of any and all defenses, objections or arguments the named defendants may have, including, but not limited to, lack of personal jurisdiction, improper venue, lack or insufficiency of process, or lack or insufficiency of service of process. *See, e.g., Arthur Williams, Inc. v. Helbig*, No. 00 Civ. 2169 (SHS), 2001 U.S. Dist. LEXIS 6576, at *7 (S.D.N.Y. May 21, 2001) (Stein, J.); *Howard v. Klynveld Peat Marwick Goerdeler*, 977 F. Supp. 654, 659-60 (S.D.N.Y. 1997).

believe that all of the cases arising from these alleged facts – securities, derivative and ERISA – ultimately should be consolidated before Judge Stein.

First, Defendants agree that the eleven currently-pending ERISA actions should be consolidated before Judge Stein.² Because all of these cases raise similar allegations under ERISA against Citigroup, the administrative and investment committees of two Citigroup 401(k) plans, and related individual defendants, consolidation plainly would promote the interests of the parties and the court. Separate litigation, on the other hand, would risk confusion, delay and inconsistent results. Consolidation before Judge Stein is appropriate because he was assigned the first-filed case, *Gray v. Citigroup Inc., et al.*, No. 07 Civ. 9790, and nine of the remaining ten ERISA cases have been referred to him as related to *Gray*. For these reasons, we also agree that any additional cases raising similar ERISA claims also should be consolidated.

Consistent with these views, defendants wrote to Judges Stein, Rakoff and Baer on November 9 and to Judges Stein, Rakoff, Baer, Chin, and Sullivan on November 15 to suggest that *all* cases filed in the Southern District based on alleged losses in Citigroup's mortgage securitization business – including ERISA, securities, and derivative actions – be assigned to the same judge. (*See* Letters from Lawrence B. Pedowitz, dated November 9 and 15, 2007, attached hereto.) Two such derivative cases (*Harris v. Prince, et al.*, No. 07 Civ. 9841, and *Cinotto v. Prince, et al.*, No. 07 Civ. 9900) and one such securities fraud case (*Saltzman v. Citigroup Inc., et al.*, No. 07 Civ. 9901) have now been reassigned to Judge Stein. Should consolidation of all these actions

² After the *Gray*, *Tadros*, and *Bolla* plaintiffs filed their motion, three additional ERISA cases were filed: *Stevens v. Citigroup Inc., et al.*, No. 07 Civ. 11156, *Goldstein v. Citigroup Inc., et al.*, No. 07 Civ. 11158, and *Southard v. Citigroup Inc., et al.*, No. 07 Civ. 11164.

occur, we would expect to propose a schedule for consideration of pretrial matters in all the cases in orderly fashion.

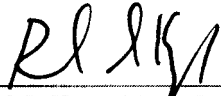
Second, as the *Gray*, *Tadros*, and *Bolla* plaintiffs' proposed pretrial order contemplates, Defendants agree that the parties should confer on a timetable for the filing of a consolidated ERISA complaint and responses thereto and that Defendants should not be required to respond to the current ERISA complaints in the individual actions.

Because the current pleadings will be superseded, we submit that it would make no sense to require Defendants to respond to them.

Finally, Defendants take no position on the *Gray* and *Tadros* plaintiffs' requests for appointment of interim lead plaintiffs and interim lead counsel. Defendants reserve the right to oppose any motion that relates to class certification, and to take discovery regarding class issues. *See, e.g., Weltz v. Lee*, 199 F.R.D. 129, 133-34 (S.D.N.Y. 2001) (appointing lead plaintiffs and lead counsel, without precluding any party from contesting class certification).

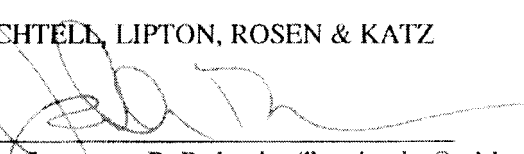
Dated: December 13, 2007
New York, New York

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November 9, 2007

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Hon. Harold Baer, Jr.
United States District Judge
United States Courthouse
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Re: *Gray v. Citigroup Inc., et al.*, 07 Civ 9790 (filed November 5, 2007) (Judge Stein)
Harris v. Prince, et al., 07 Civ 9841 (filed November 7, 2007) (Judge Rakoff)
Saltzman v. Citigroup Inc., et al., 07 Civ 9901 (filed November 8, 2007) (Judge Baer)

Dear Judges Stein, Rakoff and Baer:

We are writing to bring to your attention the fact that recent case filings before Your Honor Judge Rakoff, *Harris v. Prince, et al.*, 07 Civ 9841, filed November 7, 2007, and Your Honor Judge Baer, *Saltzman v. Citigroup Inc., et al.*, 07 Civ 9901, filed November 8, 2007, present common factual issues with a case previously filed on November 5, 2007, *Gray v. Citigroup Inc., et al.*, 07 Civ 9790, which was assigned to Your Honor Judge Stein and is the first-filed case.

WACHTELL, LIPTON, ROSEN & KATZ

The Honorable Sidney H. Stein
 The Honorable Jed S. Rakoff
 The Honorable Harold Baer, Jr.
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The common thrust of the factual allegations in all three cases relates to Citigroup's involvement in sub-prime mortgage securities business activities and public disclosures made by Citigroup with respect thereto. Thus:

- (1) *Gray*, while a case involving claims under ERISA on behalf of ERISA plan participants whose accounts held Citigroup stock, alleges that the Citigroup defendants imprudently allowed the investment of Citigroup ERISA plan assets in Citigroup common stock throughout the class period (defined as January 1, 2007 through present, *see* ¶ 2) despite the fact that the Citigroup defendants knew or should have known that investing in Citigroup stock was unduly risky due to various alleged business practices involving structured investment vehicles and sub-prime loans (*see* ¶ 4). The complaint alleges these practices "artificially inflated the value of shares of Citigroup stock" (¶ 4).

The factual allegations of the *Gray* complaint concern the sub-prime lending industry and Citigroup's alleged involvement in it (*see, e.g.*, ¶¶ 35-58) and public disclosures made by Citigroup during 2007, and, in particular, disclosures made on October 1, 2007, October 15, 2007 and early November 2007 (*see, e.g.*, ¶¶ 59-94). It is alleged that as information was revealed, Citigroup stock fell in price during 2007 (*see, e.g.*, ¶ 95).

- (2) *Harris* is a purported derivative action, with a Rule 10b-5 claim, but like *Gray*, the factual allegations are focused on Citigroup's activities in relation to sub-prime mortgage securities (*see e.g.*, ¶¶ 2-3, ¶¶ 57-61) and public announcements made by Citigroup in 2007, including on October 1, 2007, October 15, 2007 and early November 2007 (*see, e.g.*, ¶¶ 4-5, ¶¶ 62-74).
- (3) *Saltzman*, like *Harris*, asserts Rule 10b-5 claims arising out of Citigroup's activities in the mortgage securities business (¶¶ 3, 47-51) and public disclosures made by Citigroup during 2007, including announcements on October 1, 2007, October 15, 2007 and early November 2007 (*e.g.*, ¶¶ 3, 5-6, 8-9, 34-45). And, like the other actions, *Saltzman* alleges that false and misleading statements by the Citigroup defendants resulted in Citigroup's stock trading at "artificially inflated prices" (¶ 3). The *Saltzman* case is brought as a class action on behalf of purchasers of Citigroup's stock between April 17, 2006 and November 2, 2007 (¶ 1).

Defendants in all three cases overlap, including Citigroup Inc. and various present and former directors and officers.

These actions have just been filed and final determinations with respect to counsel for the defendants have not yet been made. However, it is expected that our firm, Wachtell, Lipton, Rosen & Katz, along with Paul, Weiss, Rifkind, Wharton & Garrison LLP, will be representing various of the defendants in these actions. We will be reaching out to plaintiff's counsel to discuss, and we hope resolve by agreement, various procedural and scheduling matters.

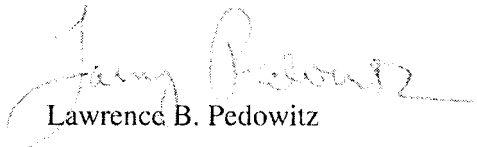
WACHTELL, LIPTON, ROSEN & KATZ

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The purpose of this letter is to bring to the Court's attention the clear commonality of the factual allegations in each of these cases and to request that all of these cases be assigned to the same judge in the interest of judicial efficiency and coordination.

Finally, Your Honors should be aware that there was another previously filed case before Judge Stein, *Leber v. Citigroup, Inc.*, 07 Civ 9329 (filed October 18, 2007). This suit alleges that Citigroup and various defendants engaged in prohibited transactions by causing Citigroup ERISA plans to invest in Citigroup-affiliated investment products and to purchase products and services provided by Citigroup's subsidiaries and affiliates in violation of various provisions of ERISA. We do not believe this action is related to the other actions referenced in the subject line of this letter and we do *not* request any consolidation or coordination of any of the actions listed in the subject line of this letter with *Leber*. We mention *Leber* here simply to avoid any confusion.

Very respectfully yours,



Lawrence B. Pedowitz

cc: Clerk of Court
Southern District of New York

Brad S. Karp, Esq. (Paul, Weiss, Rifkind, Wharton & Garrison LLP)

All plaintiffs' counsel (See attached list)

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BRANDON C. PRICE
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November 15, 2007

Hon. Sidney H. Stein
United States District Judge
United States Courthouse
500 Pearl Street, Room 1010
New York, NY 10007

Hon. Harold Baer, Jr.
United States District Judge
United States Courthouse
500 Pearl Street, Room 2230
New York, NY 10007

Hon. Denny Chin
United States District Judge
United States Courthouse
500 Pearl Street, Room 1020
New York, NY 10007

Hon. Jed S. Rakoff
United States District Judge
United States Courthouse
500 Pearl Street, Room 1340
New York, NY 10007

Hon. Richard J. Sullivan
United States District Judge
United States Courthouse
500 Pearl Street, Room 615
New York, NY 10007

Re: *Gray v. Citigroup Inc., et al.*, 07 Civ 9790 (Judge Stein)
Harris v. Prince, et al., 07 Civ 9841 (Judge Rakoff)
Saltzman v. Citigroup Inc., et al., 07 Civ 9901 (Judge Baer)
Cinotto v. Prince, et al., 07 Civ 9900 (Unassigned)
Hammerschlag v. Citigroup Inc., et al., 07 Civ 10258 (Judge Sullivan)
Rose v. Citigroup Inc., et al., 07 Civ 10294 (Judge Chin)

Dear Judges Stein, Rakoff, Baer, Sullivan and Chin:

We write to bring to your attention the fact that three recent case filings — *Cinotto v. Prince, et al.*, 07 Civ 9900, filed November 8, 2007, *Hammerschlag v. Citigroup Inc., et al.*, 07 Civ 10258, filed November 9, 2007, and *Rose v. Citigroup Inc., et al.*, 07 Civ 10294, filed November 13, 2007 — present common factual issues with at least three other cases that have been filed in this Court: (1) *Gray v. Citigroup Inc., et al.*, 07 Civ 9790, first-filed on November 5 and assigned to Your Honor Judge Stein; (2) *Harris v. Prince, et al.*, 07 Civ 9841,

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filed November 7 and assigned to Your Honor Judge Rakoff; and (3) *Saltzman v. Citigroup Inc., et al.*, 07 Civ 9901, filed November 8 and assigned to Your Honor Judge Baer. The *Hammerschlag* case has been assigned to Your Honor Judge Sullivan, the *Rose* case has been assigned to Your Honor Judge Chin, and *Cinotto*, although currently unassigned, has been referred to Your Honor Judge Rakoff as possibly related to *Harris*.

In our November 9 letter to Judges Stein, Rakoff and Baer (which is enclosed), we noted that the *Gray*, *Harris* and *Saltzman* cases are all predicated upon the losses Citigroup suffered in its mortgage securitization business; and we suggested it would serve the interests of judicial efficiency and coordination for the *Gray*, *Harris* and *Saltzman* cases to be assigned to the same Judge.

The same is true of the newly filed *Cinotto*, *Hammerschlag*, and *Rose* actions. They likewise rest upon Citigroup's recent losses on mortgage securities:

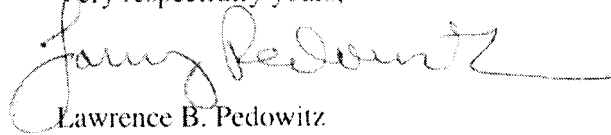
- *Cinotto* is a purported derivative action claiming mismanagement on the part of current and former Citigroup directors, including specific allegations that the defendants "intentionally caused Citigroup to issue financial statements that concealed the dangers Citigroup faced as a result of its huge exposure to [collateralized debt obligations]," which were "secured by risky subprime mortgages." Compl. at ¶¶ 3-4.
- The *Hammerschlag* plaintiffs allege, in support of Rule 10b-5 claims, that Citigroup's stock price was artificially inflated as a result of supposedly misleading statements concerning the company's "actual exposure to the risk of loss due to its enormous warehoused portfolio of mortgage-backed securities." Compl. at ¶ 1.
- The *Rose* complaint asserts ERISA claims and alleges that the Citigroup defendants imprudently invested plan assets in Citigroup common stock, notwithstanding that defendants either knew, or should have known, that Citigroup had failed to disclose its "substantial entrenchment in the subprime mortgage and related securities markets," and that as a result, "the Company's stock price was artificially inflated." Compl. at ¶ 10.

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Accordingly, for the sake of efficiency, and to minimize the burden on both the Court and the parties, we request that the *Cinotto*, *Hammerschlag*, and *Rose* cases — together with the *Gray*, *Harris*, and *Saltzman* actions and any other related cases yet to be filed — be assigned to the same Judge.

Very respectfully yours,

A handwritten signature in dark ink, appearing to read "Lawrence B. Pedowitz", with a long horizontal flourish extending to the right.

Lawrence B. Pedowitz

Enclosure

cc: Clerk of Court (Southern District of New York)
Brad S. Karp, Esq. (Paul, Weiss, Rifkind, Wharton & Garrison LLP)
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